

Message Text

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ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 /026 R

DRAFTED BY D/LOS:WNEWLIN:HHB

APPROVED BY D/LOS - ALAN G. JAMES

ARA/BR - R. ELTZ (INFORMED)

S/S - MR. GAMBLE

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R 110233Z SEP 76

FM SECSTATE WASHDC

TO USMISSION USUN NEW YORK

INFO AMEMBASSY BRASILIA

C O N F I D E N T I A L STATE 225271

EXDIS, FOR LOSDEL AMBASSADOR LEARSON

E.O. 11652:GDS

TAGS: PLOS

SUBJECT:LOS: REPLY FROM BRAZILIAN MINISTER OF EXTERNAL
RELATIONS TO SECRETARY'S LETTERS OF AUGUST 28
AND SEPTEMBER 5, 1976

1. THERE FOLLOWS TEXT LETTER TO THE SECRETARY DATED
SEPTEMBER 8, 1976, FROM BRAZILIAN MINISTER OF EXTERNAL
RELATIONS IN RESPONSE TO THE SECRETARY'S LETYERS OF AUGUST
28 AND SEPTEMBER 5. THIS LETTER WAS DELIVERED BY THE
BRAZILIAN EMBASSY ON SEP,EM,ER 9, 1976.

2. BEGIN TEXT: MY DEAR HENRY,

I READ WITH INTEREST AND SPECIAL ATTENTION YOUR LETTERS OF
AUGUST 28 AND SEPTEMBER 5, THE LATTER WITH CONSIDERATIONS
ON YOUR RECENT VISIT TO NEW YORK AND THE PRESENT STATUS OF
THE NEGOTIATIONS ON THE LAW OF THE SEA. I NOTED WITH
CONCERN THE PESSIMISTIC TONE OF YOUR NARRATION AND OF THE
COMMENTS YOU MAKE CONCERNING THE DIFFICULTIES WHICH STILL
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PERSIST WITHIN THE FORUM OF THE CONFERENCE WITH ONLY TWO

WEEKS LEFT UNTIL THE CLOSE OF THE CURRENT SESSION.

THE BRAZILIAN GOVERNMENT IS FULLY AWARE OF THE NEED FOR US TO ARRIVE AT AN UNDERSTANDING FOR THE CREATION OF AN

INTERNATIONAL AUTHORITY AND WORKING RULES PERTAINING TO THE SEABOTTOM, BESIDE NATIONAL JURISDICTION, WHICH WILL REFLECT ADEQUATELY THE PRINCIPLE OF THE COMMON HERITAGE OF MANKIND, WHILE PROVIDING A SUITABLE RETURN FOR THE INVESTMENTS OF THOSE WHO DEVELOPED THE PROPER TECHNOLOGY FOR THE EXTRACTION AND WORKING OF THE MINERALS TO BE FOUND IN POLYMETALLIC NODULES, WITHOUT CAUSING LOSSES TO PRODUCERS OF SUCH MINERALS ON LAND.

WE CONTINUE TO TRUST THAT PROGRESS MAY BE MADE, ALTHOUGH WE ARE NOT OPTIMISTIC AS TO THE POSSIBILITY OF ELIMINATIONS OF THE MAIN DIFFICULTIES WITHIN THE SHORT PERIOD REMAINING.

AS YOU KNOW, THE BRAZILIAN DELEGATION HAS EXERCISED AND WILL CONTINUE TO EXERCISE A MODERATING FUNCTION, ESPECIALLY ON THE SUBJECTS OF THE 1ST COMMITTEE OF THE CONFERENCE. WE HAVE TAKEN NOTICE, WITH INTEREST, OF YOUR INDICATION THAT THE UNITED STATES MIGHT COOPERATE TOWARDS IMPARTING VIABILITY TO THE INTERNATIONAL AUTHORITY SO THAT IT COULD ENTER INTO EFFECTIVE FUNCTION AT THE SAME TIME, OR AS CLOSE TO IT AS POSSIBLE, AS THAT OF THE BEGINNING OF OPERATIONS IN THE AREA BY THE COMPANIES ENTERING INTO CONTRACT WITH THE AUTHORITY.

DECIDED AND FLEXIBLE ACTION BY THE UNITED STATES DELEGATION TOWARDS DEVELOPING THIS IDEA, WITH A VALID FINANCIAL GROUND PLAN AND TRANSFER OF TECHNOLOGY, PLUS THE ACCEPTANCE, BY THE REMAINING DELEGATIONS, OF A MORE PRECISE AND DETAILED ELABORATION OF THE PARAMETERS AND REQUISITES FOR THE CONTRACTS BETWEEN THE COMPANIES AND THE AUTHORITY, SO AS TO PROVIDE GREATER SECURITY AND FORESEEABILITY FOR THE APPLICANTS FOR EXPLOITATION, MAY PERHAPS HELP ACHIEVE THE DESIRABLE POINT OF BALANCE BETWEEN THE MAIN TENDENCIES AND, HOPEFULLY, PERMIT CREATION OF THE CONSENSUS.

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THE BRAZILIAN DELEGATION WILL, AS FAR AS IT CAN, COOPERATE TOWARDS THIS END.

AS REGARDS THE NATURE OF THE EXCLUSIVE ECONOMIC ZONE, AS DEFINED IN THE SOLE REVISED TEXT OF THE CHAIRMAN OF THE II COMMITTEE, I BELIEVE THAT IT COULD BE ACCEPTABLE TO THE MAJORITY OF THE COUNTRIES IF IT CAN BE CHARACTERIZED

AT LEAST AS A SUI GENERIS ZONE. BRAZIL, AND OTHER COUNTRIES WITH A TERRITORIALISTIC POSITION, AS WELL AS MANY OTHERS STILL WHOSE POSITIONS LEANED IN THAT DIRECTION, HAVE ALREADY MADE, IN THE COURSE OF RECENT YEARS, A SIGNIFICANT NEGOTIATING EFFORT TO APPROACH THE CONCEPTION, IN ITS GENERAL TRAITS AS SET OUT IN THE SOLE

REVIEWED TEXT, OF THE EXCLUSIVE ECONOMIC ZONE, WHICH IN FACT CONSTITUTES AN INTERMEDIATE AND CONCILIATORY SOLUTION.

IT APPEARS TO ME THAT IT WILL NOT BE POSSIBLE AT THIS POINT TO GO BEYOND THE STAGE WE HAVE REACHED.

AS A POSSIBLE FORM OF AVERTING CERTAIN CONCERNS, THE INCLUSION MIGHT BE STUDIED OF A PROVISION IN ARTICLE 44 PRECLUDING THE ASSIMILATION OF THE EXCLUSIVE ECONOMIC ZONE EITHER TO THE TRADITIONAL HIGH-SEAS CONCEPT OR TO THE ORTHODOX CONCEPT OF THE TERRITORIAL SEA, WHILE LEAVING IT EXPRESSLY RECOGNIZED THAT THE SOVEREIGN RIGHTS AND THE EXCLUSIVE JURISDICTIONS OF THE COASTAL STATE WOULD APPLY WITHOUT PREJUDICE OF THE RIGHTS ASCRIBED IN THE CONVENTION TO THIRD STATES IN THAT ZONE. A FORMULA BASED ON SUCH PREMISES MIGHT PERHAPS DISPEL THE DOUBTS OF THOSE WHO FEAR A CREEPING JURISDICTION ON THE PART OF COASTAL STATES IN THE EXCLUSIVE ZONE AND OF THOSE WHO, ON THEIR PART, FEAR THAT THE RIGHTS RECOGNIZED FOR THIRD STATES COULD BE ACCENTUATED BY TIME AND UNDER PRESSURE FROM THE MARITIME POWERS, SO AS TO MAKE THE ECONOMIC ZONE VIRTUALLY A PART OF THE HIGH-SEAS.

INSOFAR AS REGARDS SCIENTIFIC RESEARCH, THE REVISED TEXT OF NEGOTIATION AND THE TEXT, AS YET INFORMAL, RESULTING FROM THE EFFORTS OF THE CHAIRMAN OF THE III COMMITTEE ON ART. CONFIDENTIAL

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60, REPRESENT A BASIS FOR CONCILIATION, WHICH BRAZIL WOULD ADMIT ACCEPTING AS TEXT OF NEGOTIATION, SINCE IT APPEARS TO BE THE ONLY VIABLE FORM FOR THE PRESERVATION OF THE INTERESTS OF THE COASTAL STATES AND OF THIRD STATES. WELL EXAMINED, BOTH TEXTS APPEAR TO ME TO SAFEGUARD THE INTERESTS OF THE RESEARCHING STATES.

IN THE MATTER OF THE SOLUTION OF CONTROVERSIES, I THINK THAT THE PRESENT SOLE TEXT OF NEGOTIATION IS ONE STAGE BEHIND THE TEXTS OF THE REMAINING COMMITTEES. IN EFFECT, IT IS ONLY NOW, AFTER A GENERAL DEBATE IN PLENARY OF THE PAST SESSION, THAT IT IS BEGINNING TO BE EXAMINED CONCRETELY, AND, FOR THE FIRST TIME, IN DEPTH, WITH AN ANALYSIS OF ALL ITS IMPLICATIONS. AS YOU MUST KNOW, THE BRAZILIAN GOVERNMENT HAS MAINTAINED AN OPEN POSITION IN REGARD TO A

COMPULSORY SYSTEM OF SOLUTION OF CONTROVERSIES FOR THE
DISPUTES ARISEN IN AREA BEYOND NATIONAL JURISDICTIONS,
WHETHER THEY RELATE TO INTERNATIONAL SEABOTTOMS OR TO THE
HIGH-SEAS. IN THE-LATTER CASE, AN IMPORTANT INNOVATION
WOULD INDEED OCCUR IN THE TRADITIONAL PRACTICE OF STATES.

BRAZIL CANNOT, HOWEVER, ADMIT IN PRINCIPLE THE MECHANISM
PROPOSED IN PART IV OF THE SOLE TEXT, OF A COMPULSORY
GENERAL SOLUTION FOR THE CONTROVERSIES ARISEN IN AREAS UNDER
UNDER NATIONAL JURISDICTION. WE ADMIT, HOWEVER, EXAMINING,
ONCE THE SUBSTANTIVE NORMS ARE DRAFTED, THE SPECIAL CASES
WHEREIN EXCEPTIONS TO THIS GENERAL POSITION COULD BE
CONSIDERED. THE TENDENCY THAT APPEARS TO ME TO GROW IN
IMPORTANCE DURING CURRENT DISCUSSIONS ON THE SUBJECT SEEMS
TO INDICATE THIS ROAD.

YOUR LETTER IMPRESSED ME WITH A FEELING OF URGENCY. I
BELIEVE THAT BOTH OUR GOVERNMENTS ARE DESIROUS OF OBTAINING
A BALANCED POSITION FOR THE AGGREGATE OF THE QUESTIONS
PLACED BEFORE THE CONFERENCE OF THE SEA. THE BRAZILIAN
DELEGATION HAS AMPLY EXPRESSED THE ENORMOUS EFFORT MADE BY
THE BRAZILIAN GOVERNMENT TO APPROACH UNIVERSALLY VIABLE
FORMS OF CONCILIATION.

IN ALL QUESTIONS HERE SUMMARIZED, THE EVOLUTION OF BRAZIL'S
POSITION HAS BEEN OUTSTANDING, EVER SINCE THE BEGINNING OF
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THE NEGOTIATING PROCESS, AND THIS FACT SHOULD BE DULY
RECOGNIZED.

I BELIEVE, IN THE LIGHT OF THE FOREGOING, THAT INTERNATIONAL
PUBLIC OPINION, AS WELL AS THE NATIONAL OPINION IN OUR OWN
COUNTRIES, MUST BE PREPARED TO ACCEPT THE POSSIBLE PROGRESS
DURING THE DAYS OF NEGOTIATION THAT ARE LEFT TO US, WITH-
OUT THE GENERALIZATION OF A FEELING OF DISCOURAGEMENT AND
SCEPTICISM.

WARM REGARDS,

ANTONIO

(ANTONIO F. AZEREDO DA SILVEIRA). END TEXT

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 11 SEP 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: coburnhl
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE225271
Document Source: CORE
Document Unique ID: 00
Drafter: WNEWLIN:HHB
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760344-0076
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760970/aaaachjz.tel
Line Count: 218
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: coburnhl
Review Comment: n/a
Review Content Flags:
Review Date: 19 MAY 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 MAY 2004 by woolflhd>; APPROVED <15 SEP 2004 by coburnhl>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: LOS: REPLY FROM BRAZILIAN MINISTER OF EXTERNAL RELATIONS TO SECRETARY'S LETTERS OF AUGUST 28 AND SEPTEMBER 5, 1976
TAGS: PLOS, PSDC, BR, UN, LOS
To: USUN NEW YORK
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006